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8 Attorneys for Defendant ARISTA NETWORKS, INC.

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 CISCO SYSTEMS, INC.,

14 Plaintiff,

15 v.

16 ARISTA NETWORKS, INC.,

17 Defendant.

Case No. 3-14-CV-05344-BLF

**DECLARATION OF
ELIZABETH K. MCCLOSKEY IN
SUPPORT OF ADMINISTRATIVE
MOTION TO SHORTEN TIME ON
BRIEFING AND HEARING SCHEDULE
FOR ARISTA'S MOTION TO COMPEL
INTERROGATORY RESPONSES**

Judge: Honorable Paul Grewal

Date Filed: December 5, 2014

1 I, Elizabeth K. McCloskey, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate of the law firm of Kecker & Van Nest LLP, counsel for Defendant Arista Networks, Inc.
4 (“Defendant”) in the above-captioned matter. I am admitted to practice before this Court. I make
5 this declaration based on personal knowledge and if called as a witness, I could and would testify
6 competently to the same as stated herein.

7 2. Arista propounded Interrogatory 5 on May 14, 2015 and propounded Interrogatory
8 16 on July 24, 2015. To date, my colleagues and I have participated in six meet and confer calls
9 with Cisco’s counsel regarding Interrogatory 5, Interrogatory 16, or both interrogatories. My
10 colleague Katherine Lloyd-Lovett first wrote to Cisco’s counsel regarding Interrogatory 5 on July
11 7, 2015. She and I then participated in a meet and confer call regarding that request on July 13,
12 2015. My colleagues and I have also exchanged numerous letters and emails regarding those
13 interrogatories with counsel for Cisco. Arista’s extensive attempts to meet and confer with Cisco
14 regarding the information sought in Interrogatories 5 and 16 is described at greater length in the
15 Declaration of Katherine Lloyd-Lovett in Support of Motion to Compel Interrogatory Responses
16 (Dkt. No. 67). On two separate instances, Arista has held off on filing a motion to compel in light
17 of Cisco’s promise to supplement its response to Interrogatory 5.

18 3. On September 3, 2015, Ms. Lloyd-Lovett wrote a letter to counsel for Cisco
19 explaining why Cisco’s responses to Interrogatories 5 and 16 remained seriously deficient. In
20 that letter, Ms. Lloyd-Lovett stated that Arista was prepared to seek relief from the Court to
21 compel a complete answer to these interrogatories and asked Cisco to inform us by September 4,
22 2015 whether it would be willing to stipulate to expedited briefing on this issue.

23 4. On September 15, 2015, I participated in a meet and confer call with Cisco’s
24 counsel Matthew Cannon and Peter Klivans regarding Interrogatories 5 and 16. Messrs. Cannon
25 and Klivans could not provide any specifics about what, if anything, Cisco had done to collect the
26 basic bibliographic information and derivation narrative for all of the asserted commands. They
27 stated that they were gathering information to respond to Interrogatories 5 and 16 but would not
28 commit to produce all of the information sought by the interrogatories or to supplement prior to

1 October 5. When my colleague Brian Ferrall asked Cisco's counsel to commit to what it would
2 provide in its supplemented responses, Messrs. Cannon and Klivans declined, stating that they
3 would make such a proposal at some indeterminate future date. Mr. Ferrall said that we needed a
4 statement of Cisco's position as soon as possible and that we would file a motion to compel this
5 week if the parties could not reach agreement. Mr. Ferrall further stated that Arista would seek an
6 expedited hearing on its motion to compel. Mr. Klivans stated that Cisco would oppose expedited
7 briefing. After the phone call, neither Messrs. Cannon nor Klivans sent a proposal or any follow-
8 up.

9 5. Arista filed its Motion to Compel on September 17, 2015. On that same day at
10 approximately 7:00 p.m., Ms. Lloyd-Lovett sent an email to Cisco's counsel asking whether they
11 were willing to stipulate to an expedited briefing schedule on Arista's motion to compel. Ms.
12 Lloyd-Lovett proposed that Cisco oppose the motion on September 24; that Arista reply by
13 September 28; and that the parties request a hearing on the motion on September 29. On
14 September 18, 2015, at approximately 3:31 p.m., Mr. Cannon replied stating that Cisco would not
15 consent to Arista's motion to shorten time and anticipates opposing it.

16 6. Arista seeks briefing and hearing on shortened time—and will suffer substantial
17 prejudice if this motion is denied—because, as further described in Arista's Motion to Compel
18 (Dkt. No. 66), the discovery sought in Interrogatories 5 and 16 is critical to Arista's defenses and
19 is foundational to further discovery efforts. It will identify persons whom Arista will likely need
20 to depose to learn how each asserted CLI command, hierarchy, mode, and prompt came about,
21 when it was "created" at Cisco (if it was at all), and when and how it was used. This discovery is
22 a gateway to substantial additional discovery (including third party discovery of individuals who
23 may no longer be employed by Cisco), and Cisco—as the purported copyright holder—has sole
24 possession of the requested information. Arista has been seeking this category of discovery since
25 May 2015 and can wait no longer for Cisco's complete response.

26 7. There have been no previous time modifications in this case, either by stipulation
27 or Court order, and the requested time modification will have no impact on the schedule for the
28 case.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration was executed on September 18, 2015, in
3 San Francisco, California.

4 /s/ Elizabeth K. McCloskey
5 ELIZABETH K. MCCLOSKEY